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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207197
Party	Defendant SONG, ZHILAN
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/508517

Filing Date: January 4, 2012

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NAVISTAR, INC.

Opposer,

v.

ZHILAN SONG,

Applicant

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES

Applicant, Zhilan Song, hereby submits its Answer to the Notice of Opposition filed by Opposers, Navistar, Inc. as follows, with the following numbered paragraphs corresponding to the numbers of the paragraphs of the Notice of Opposition:

1. Applicant admits the allegations of Paragraph 1.
2. Applicant admits the allegations of Paragraph 2.
3. Applicant admits the allegations of Paragraph 3.
4. Applicant admits the allegations of Paragraph 4.
5. Applicant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 5.
6. Applicant admits the allegations of Paragraph 6.

7. Applicant admits the allegations of Paragraph 7.
8. Applicant admits the allegations of Paragraph 8.
9. Applicant admits the allegations of Paragraph 9.
10. Applicant admits the allegations of Paragraph 10.
11. Applicant admits the allegations of Paragraph 11.
12. Applicant admits the allegations of Paragraph 12.
13. Applicant admits the allegations of Paragraph 13.
14. Applicant admits the allegations of Paragraph 14.
15. Applicant admits the allegations of Paragraph 15.
16. As to Paragraph 16, Applicant denies that the goods are similar. Applicant further denies that the use of the Opposed Mark is likely to cause confusion, to cause mistake or to deceive.
17. Applicant is without knowledge or information as to the Opposers *belief* that it will be injured by the registration of the Applicant's Mark upon the Principal Register. Applicant also denies the Opposers claim to the "exclusive right" to the PROSTAR mark.
18. Applicant denies the allegations of Paragraph 18.

FIRST AFFIRMATIVE DEFENSE

Applicant states that the Opposer's product is not similar to the Applicants product and consumers can easily distinguish between them. The Opposer's Registration No. 3,446,636 is registered for "Highway Trucks". The Applicant has applied for "Tires for vehicles, namely OTR (off-the-road) tires, skid tires, and tires for industrial applications, for agricultural implements, tractors, forklifts and trailers". The Applicant's tires are for off road equipment and trailers. Applicant's tires are not for trucks, such as the Opposer's "Highway Trucks".

SECOND AFFIRMATIVE DEFENSE

The Opposer's products are vehicles and the Applicant's products are tires, a component of a vehicle. If all vehicle components were to be deemed related goods, then registration of a mark for one vehicle or vehicle component would necessarily preclude registration of the same or similar mark for all other vehicle components. However, this is not reflected in Patent and Trademark Office practice which has allowed registrations for many identical marks for vehicles and vehicle components from different sources. The following are examples where vehicles and tires from different sources share the same trademark.

TRADEMARK	VEHICLE PTO SERIAL #	TIRE PTO SERIAL #
Titan	78752055	77781771
Roadmaster	73815721	75188426
Frontier	75007763	77736287
Viper	74159920	74556881

Therefore, the common PTO practice of registering identical marks for vehicles and different types of vehicle products supports the conclusion that consumers will not be confused as to the connection between the goods sold under Applicant's Mark and those sold under the Opposer's Mark.

THIRD AFFIRMATIVE DEFENSE

In the marketplace vehicle manufactures are not known for making tires. Even though a vehicle comes with tires, consumers do not expect that the tires originate from the same source. Consumers would not presume that "tires" are from the same source as "Highway Trucks".

FORTH AFFIRMATIVE DEFENSE

Based on the Opposer's own registration and use of the "Loadstar" trademark, the opposer does not see a conflict in sharing the same name with a tire. Kenda Tire holds an active trademark (Serial # 74217401) to use "Load Star" for their tires that predates the Opposer's registration of "Loadstar" (Serial #77844296) for use on vehicles. This is inconsistent with the Opposer's claim in Notice of Opposition Paragraph 16 that tires are similar and closely related goods.

FIFTH AFFIRMATIVE DEFENSE

The "Prostar" trademark has been approved by the Patent and Trademark Office for other vehicle components after the "Prostar" trademark was held by the Opposer. The Polaris Company holds an active trademark for "Prostar" engines in vehicles (Serial# 85207001). The Polaris "Prostar" engine is not for "Highway Trucks" and the Applicant's "Prostar" tires are not for "Highway Trucks" and neither of these is likely to cause confusion with the Opposer's use of "Prostar" for "Highway Trucks". Approval for the "Prostar" mark shows that Polaris' engines were not similar and closely related goods. Therefore, the Applicant's tires are not similar or closely related goods.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be rejected and that the Applicant's mark be allowed to proceed to registration.

Respectfully Submitted,

By: Zhilan Song 10/02/2012

Zhilan Song

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CERTIFICATE OF SERVICE

I, Zhilan Song, hereby certify that the above and foregoing Answer to the Notice of Opposition with Affirmative Defenses was served upon Opposers by depositing a copy of the same in the United States mail, first class prepaid, on the 2nd day of October, 2012, addressed to:

Brett A. August or Jeffrey A. Wakolbinger

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Attorneys for Opposers